



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

RQ-3

December 3, 1998

Richard J. Fox, Treasurer  
Wisconsin Right to Life  
Political Action Committee  
10625 W. North Avenue  
Milwaukee, WI 53226

Identification Number: C00173278

Reference: 12 Day Pre-Primary Report (7/1/98-8/19/98)

Dear Mr. Fox:

On November 10, 1998, you were notified that a review of the above-referenced report(s) raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act.

Your November 16, 1998, response is incomplete because you have not provided all the requested information. For this response to be considered adequate, the following information is still required.

-You indicate that the Wisconsin Right to Life PAC rents a mailing list from Wisconsin Right to Life, Inc. at fair market value. You also state that your connected organization is paid in installments for the rental of this list which is then used to make independent expenditures. Please note that failure to make payments to your connected organization prior to the use of the mailing list could result in prohibited corporate contributions 2 U.S.C. § 441b. In order to establish that payments were made to your connected organization prior to the use of the mailing list you should provide the dates that the independent expenditures were made, the dates that the mailing list was used to facilitate the independent expenditures and the dates that the connected organization was reimbursed for the use of the mailing list.

-An independent expenditure is an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate (see enclosed information). On Schedule E of your report you need to

provide additional clarification that the payments made to your connected organization were for independent expenditures made on behalf of federal candidates. For example you show a \$977.80 payment to Wisconsin Right to Life, Inc., the purpose of which is 'wages for time spent on direct election activities'. Based on the purpose shown, it does not appear that this expenditure was for a communication that expressly advocates the election or defeat of clearly identified candidates. Examples of some types of communications are television or radio ads, newspaper ads, or mailers. You should clarify that the expenditures itemized on Schedule E meet the definition of independent expenditures and provide purposes for each expenditure that describe the type of communication used. You should also clarify whether the payments to your connected organization were made in advance of the services rendered.

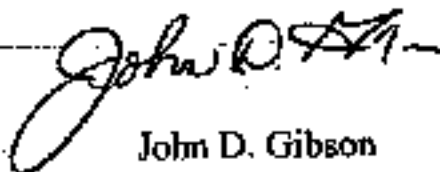
-You report discloses an outstanding balance(s) beginning this period for the debt(s) owed to Alan Neuwirth, A to Z Printing, T Q Mail, and First Breath Alliance. However, an outstanding balance(s) at the close of the period was not disclosed on your July Quarterly Report. Please amend your report(s) to clarify this discrepancy.

-The Commission acknowledges that you intend to file an amended 12 Day Pre-Primary Report to include the missing aggregate year-to-date totals on Schedule A once a software problem has been resolved.

If this information is not received by the Commission within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Richard Ng on our toll-free number (800) 424-9530 or our local number (202) 694-1130.

Sincerely,



John D. Gibson  
Assistant Staff Director  
Reports Analysis Division

Enclosure

automatically counts against the SSF's contribution limits regardless of whether the SSF exercised direction or control over the choice of recipient.

114.2(f)(2)(iii) and 114.2(f)(4)(III). See also Candidate and Party Appearances, Solicitation by the Corporation or Labor Organization, page 48.

## Purchase of Fundraising Items and Tickets

An SSF may purchase tickets to a fundraising event held by a candidate's committee, or it may purchase items sold for fundraising purposes by the committee. The entire amount paid for a ticket or item is considered a contribution. 100.7(a)(2).

Note that in an advisory opinion the Commission ruled that the travel expenses incurred by an SSF representative to attend a fundraising event for another political committee were administrative expenses that could be paid by the SSF's connected organization. See AO 1981-36.

## Loans and Loan Endorsements

An SSF may loan money to a candidate committee, or it may endorse or guarantee a bank loan for the committee. The loan or the amount endorsed or guaranteed counts as a contribution to the extent that the loan remains outstanding. 100.7(a)(1)(i).

**EXAMPLE:** A multicandidate SSF guarantees half the value of a \$10,000 loan from a bank to a candidate's committee, thereby making a \$5,000 contribution to the candidate toward the next election. The candidate's committee makes monthly repayments on the loan in amounts of \$1,000. Those payments reduce the SSF's contribution by \$500 each month (i.e., half the repayment). As the outstanding balance is reduced, the SSF may make new contributions to the candidate for the same election, as long as the overall \$5,000 limit is not exceeded.

## Contributions to Other Committees

In addition to contributing directly to candidate committees, an SSF may support other committees that contribute to candidates, such as party committees. An SSF contribution to another political committee may take any of the forms described in this section.

A contribution to a committee that supports more than one candidate is subject to a yearly contribution limit of \$5,000. The contribution does not count against the limit for a particular candidate unless the SSF:

- Gives to an unauthorized single-candidate committee (i.e., a political committee that supports only one candidate);
- Knows that a substantial portion of its contribution will be given to or spent on behalf of a particular candidate; or
- Retains control over the funds after making the contribution.

110.1(h); 110.2(h).

## Supporting Nonfederal Candidates

SSFs may contribute to nonfederal candidates using money they have raised for federal elections. Donations to nonfederal candidates are subject to state and local laws, not the Federal Election Campaign Act, but the SSF must still disclose the disbursements in its FEC reports. AOs 1986-27 and 1981-18.

SSFs active in both federal and non-federal elections should also consult Appendix A.

## 2. Independent Expenditures

In addition to making contributions, an SSF may support (or oppose) candidates by making independent expenditures. Independent expenditures are not contributions and are not subject to limits. (However, contributions made to a committee or to another person making independent expenditures are subject to limits, as explained below.)

### What Is an Independent Expenditure

An independent expenditure is an expenditure for a communication, such as a newspaper, TV or direct mail advertisement that:

- Expressly advocates the election or defeat of a clearly identified candidate, and
- Is not made in coordination, consultation, cooperation, or at the request or suggestion of a candidate, agent of a candidate or candidate's committee.

109.1(a).

### When Is a Candidate "Clearly Identified"

A candidate is "clearly identified" if the candidate's name, nickname, photograph or drawing appears, or the identity of the candidate is otherwise apparent. Examples include: "the President," "your Congressman," "the Democratic presidential nominee," "the Republican candidate for Senate in the State of Georgia." 100.17.

### What Is "Express Advocacy (Candidate Advocacy)"

"Express advocacy (candidate advocacy)" means that the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s).

There are two ways that a communication can be considered express advocacy (candidate advocacy): by use of certain "magic words" and by the "reasonable person" test. 100.22.

#### "Magic Words"

The following words convey a message of express advocacy (candidate advocacy):

- "Vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for the U.S. Senate in Georgia," "Smith for Congress," "Bill McKey in '96";
- Words urging action with respect to candidates associated with a particular issue, e.g., "Vote Pro-Life"/"Vote Pro-Choice," when accompanied by names or photographs of candidates identified as either supporting or opposing the issue;
- "Defeat" accompanied by a photograph of the opposed candidate, or the opposed candidate's name, or "reject the incumbent"; and
- Campaign slogan(s) or word(s), e.g., on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example, "Nixon's the One," "Carter '76," "Reagan/Bush". 100.22(a).

#### "Reasonable Person" Test

In the absence of such "magic words," express advocacy (candidate advocacy) is found in a communication that, when taken as a whole and with limited reference to external events, such as the proximity to the election, can only be interpreted by a "reasonable person" as advocating the election or defeat of one or more clearly identified candidate(s).

#### 100.22(b)(1) and (2).<sup>3</sup>

Note that the author's intent is irrelevant. The test is how a "reasonable" receiver of the communication objectively interprets the message. If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is express advocacy (candidate advocacy) regardless of what the author intended.

**EXAMPLE:** An advertisement that discusses the candidate's character, qualifications or accomplishments would be express advocacy (candidate advocacy) if, when taken in context, it could have no other reasonable meaning than to encourage action to elect or defeat one or more candidates for federal office.

Multiple page communications or multiple inserts in the same envelope in a direct mail piece are to be read all together as a whole. MGFL 478 U.S. at 249.

If an issue advocacy communication also contains the advocacy of a candidate that is unmistakable, unambiguous and suggestive of only one meaning (that being the election or defeat of that candidate), the communication will be treated as express advocacy (candidate advocacy). 100.22(b)(2).

### What is Not an Independent Expenditure

When an expenditure is made under the circumstances described below, it results in an in-kind contribution to a candidate rather than an independent expenditure and therefore counts against the SSF's contribution limit for that candidate. 109.1(c).

#### Coordination with Candidate's Campaign

Any expenditure made in cooperation or consultation with the candidate's campaign or as a result of a request, suggestion, or prior consent from the candidate or the campaign is an in-kind contribution, not an independent expenditure. 109.1(b)(4)(i). See AO 1984-30.

#### Direction by Campaign Employee

An expenditure made on behalf of a candidate but directed by a current or former officer or employee of that candidate's committee or by a person who has received compensation or reimbursement from the campaign is presumed not to be independent. 109.1(b)(4)(i)(B). See also AOs 1983-26, 1980-116 and 1979-80.

#### Use of Common Vendors

The independence of an expenditure made by an SSF for a communication in support of a candidate (or in opposition to his or her opponent) may be compromised if the SSF and that candidate's campaign use the same consultant or vendor. See AOs 1982-20 and 1979-80.

#### Solicitations on Behalf of a Candidate

An expenditure by an SSF for a communication that solicits the public for contributions on behalf of a candidate is an in-kind contribution if the SSF collects and forwards the money to the candidate's committee. See AO 1980-46. See also Appendix D, "Earmarked Contributions."

#### Candidate-Prepared Material

Any expenditure to distribute or republish campaign material (print or broadcast) produced or prepared by a candidate's campaign is an in-kind contribution, not an independent expenditure. 109.1(d).

#### Prior Contributions May Affect Independence

An SSF should be aware that making certain types of in-kind contributions to a particular candidate may jeopardize the SSF's ability, in the future, to make independent expenditures on behalf of that same candidate.

For example, if a multicandidate committee provided paid staff or services to a candidate's primary campaign, then the committee would have direct knowledge of the candidate's campaign strategy, plans or needs. Therefore, expenditures by that committee during the general election could not be considered independent. AO 1984-30.

### Disclaimer Notice Required

A communication representing an independent expenditure must display a disclaimer notice. See Section 4 for more information.

### Allocation Among Candidates

When an independent expenditure is made on behalf of more than one clearly

identified candidate, the SSF must allocate the expenditure among the candidates in proportion to the benefit that each is expected to receive. For example, in the case of a published or broadcast communication, the attribution should be determined by the proportion of space or time devoted to each candidate in comparison with the total space or time devoted to all the candidates. 104.10; 106.1(a).

### Contributing to Committees That Make Independent Expenditures

A contribution by an SSF to a committee that makes independent expenditures is subject to the SSF's limit for that committee.

A contribution to a committee that supports only one candidate, however, is subject to the SSF's per candidate, per election limit. 110.1(h).

### Prohibitions Apply

Note that the same persons prohibited from making contributions to candidates and political committees are also prohibited from making expenditures, including independent expenditures, in connection with federal elections. Thus, independent expenditures by corporations, labor organizations, federal government contractors and foreign nationals are prohibited.

## 3. Independent Expenditures by Qualified Nonprofit Corporations

Although corporations and labor organizations are prohibited under the Act from making contributions or expenditures in connection with federal elections, a limited exception allows certain *Qualified Nonprofit Corporations* (QNCs) to make independent expenditures (but not contributions). If a QNC makes a reportable (see Filing Reports, page 24) independent expenditure, it must demonstrate its eligibility for QNC status. The following paragraphs explain these issues in greater detail.

### Criteria For QNC Status

To qualify as a QNC, a corporation must meet the five requirements listed below:

<sup>3</sup> In 1996, the decision by the 1st Circuit Court of Appeals in *Maine Right to Life Committee v. FEC*, 98 F. 3d 1 (1st Cir. 1995) (per curiam) invalidated, within the First Circuit, an FEC regulation containing this "reasonable person" test. The regulation was based on the 1987 8th Circuit Court of Appeals decision, *Furgatch*, 807 F. 2d 857 (8th Cir. 1987). The split in the circuits remains unresolved. However, as this publication went to print, August 8, 1997, a petition for Supreme Court review of the First Circuit decision had been filed on behalf of the Commission.

## 7. Independent Expenditures

itemize any independent expenditure which, by itself or when added to other independent expenditures made to the same payee during the same calendar year, exceeds \$200. Independent expenditures are itemized on Schedule E. A subtotal for itemized independent expenditures is entered on Line (a).

(a). Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the subtotal of those expenditures on line (b). 104.3(b)(3)(vii)(C) and 104.4(a).

Enter the total of itemized and unitemized independent expenditures on Line (c) of Schedule E and on Line 24 of the Detailed Summary Page.

The treasurer must sign the statement on Schedule E which certifies, under penalty of perjury, that the expenditure meets the standards of "independence" (see Chapter 4 for more information). The form must be notarized.

The SSF must file a special notice when it makes independent expenditures aggregating \$1,000 or more after the 20th day but more than 24 hours before the day of an election. The notice must be received by the filing office within 24 hours after the expenditure is made (see "Federal Filing" on page 30). The notice must include all the information required on Schedule E. (This reporting requirement applies to a written contract of more than \$1,000 which the committee has not yet paid.) 104.4(b) and 104.5(g).

The SSF must report the last-minute expenditure a second time on Schedule E, filed with its next regular report.

[illegible]

Continuously itemize all loans received and made by the SSF until they are repaid. All repayments made or received on a loan must also be itemized. 104.3(a)(4)(iv); 104.3(b)(3)(ii) and (vi); 104.3(d); 104.11. Procedures for reporting loans and loan repayments are explained below.

Reminder: Loans are considered contributions to the extent of the outstanding balance of the loan. 100.7(a)(1)(i). Loans from banks, however, are not considered contributions if made in the ordinary course of business. Endorsements and guarantees of bank loans, however, do count as contributions. 100.7(a)(1)(i) and (b)(1).

**Schedule A: Initial Receipt of Loan**  
Itemize the receipt of a loan, regardless

